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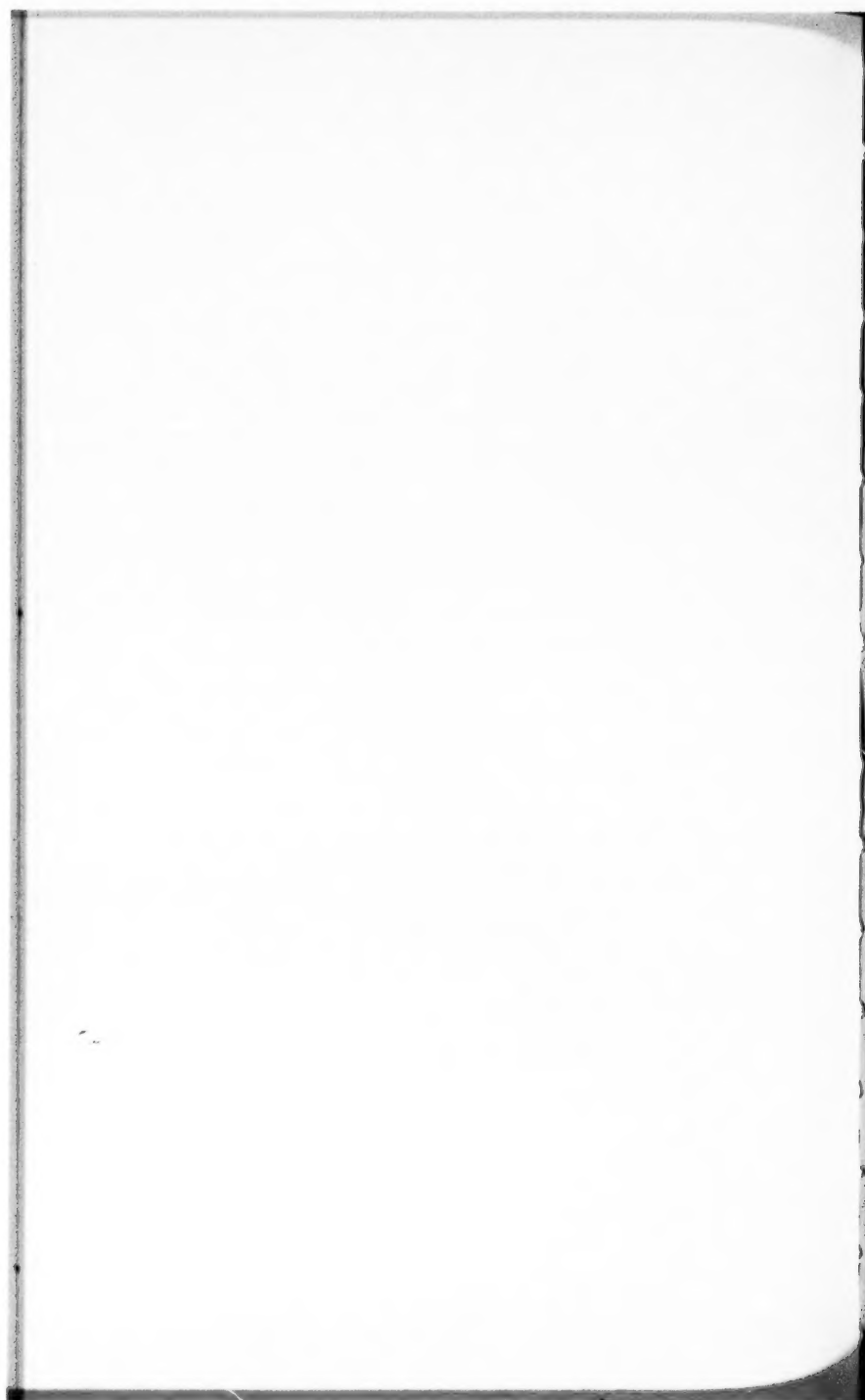
IN THE
Supreme Court of the United States
OCTOBER TERM, 1941.
No. 996

NORTHERN MINING CORPORATION (a corporation),
Petitioner,
—against—
MAX TRUNZ,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT AND
BRIEF IN SUPPORT THEREOF.**

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No. .

NORTHERN MINING CORPORATION (a corporation),
Petitioner,

—against—

MAX TRUNZ,
Respondent.

**Petition for a Writ of Certiorari to the Circuit Court
of Appeals for the Ninth Circuit.**

*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

The petition of Northern Mining Corporation for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit, respectfully shows:

The petitioner seeks to review the decision of the Circuit Court of Appeals for the Ninth Circuit (124 Fed. 2d 14), affirming a judgment of the United States District Court for the State of Montana, granting the relief demanded in the complaint (R. 380).

The transcript of record in this case, including the proceedings in the Circuit Court of Appeals has been filed herewith in accordance with Rule 38 of this Court.

Jurisdiction.

The basis of jurisdiction of this Court is that the Circuit Court of Appeals has decided an important question

of local law (Revised Codes of Montana of 1935, §§5933 and 6004) in a way conflicting with the applicable local decisions.

This action to quiet title was commenced in the State District Court. Jurisdiction of the United States District Court was invoked by virtue of sub-division 1 of Section 41, Title 28, U. S. C., by reason of diversity of citizenship and the matter in controversy, exclusive of interest and costs, exceeding the sum of Three Thousand Dollars, as appears by the Petition for Removal (R. 7), filed as provided by Section 71 of Title 28, U. S. C., and the Order of the State District Court removing the action to the United States District Court for the District of Montana (R. 17).

Statement of Facts.

The action was commenced by respondent to quiet title to real property in Park County, Montana, respondent alleging in his complaint that he owned the real property in fee simple and that the defendants claimed some title thereto (R. 3). The complaint was amended by respondent to bring in other defendants (R. 6). The action was removed to the United States District Court on petition of the Northern Mining Corporation, petitioner (R. 17). The petitioner answered and denied that the respondent owned the property in fee simple and alleged that it owned the property itself in fee simple (R. 20). For its first defense, the petitioner alleged that on the 2nd day of July, 1934, the Glengarry Mining Company, one of the defendants, owned the property in fee simple absolute, that on that day it purported to convey to the respondent the said lands, but that the conveyance was void and of no force and effect, in that, the laws of the State of Montana had not been complied with with refer-

ence to a conveyance of real property by a corporation, in that, no meeting of the stockholders of that corporation was ever held or called for the purpose of considering the sale of the real property, as required by the State law. For its second defense, the petitioner alleged that the deed was void as a mortgage for the same reasons. For its third defense, the petitioner alleged that about the 20th day of June, 1936, a judgment was rendered by the State District Court in favor of one Seth R. Crone and against Glengarry Mining Company, the owner of the property on that date, that on the 28th of July, 1936, a writ of execution was issued, directed to the Sheriff of Park County, and levy was made upon the real property in question, and the property sold under the judgment for the sum of \$14,308.85, and that thereafter, one Birkel, then a stockholder of the Glengarry Mining Company, as such stockholder and for the benefit of himself as such stockholder, and all other stockholders who desired to join, redeemed the property, as provided by the State laws, paying therefor the sum of \$16,291.17; that thereafter, a Sheriff's deed was issued to him, and he thereafter conveyed the property to the petitioner. For a defense to the respondent's complaint the petitioner alleged that on the 2nd day of July, 1934, the Glengarry Mining Company borrowed from the respondent the sum of \$25,000 and as a condition of lending the money, the respondent exacted a usurious rate of interest. The respondent filed its reply to the petitioner's answer (R. 34), in which he denied the substantial allegations of the first two affirmative defenses. Either positively, or because of lack of knowledge, he admitted as to the third affirmative defense designated as paragraph IV in the answer, the suit in the State Court, sale of the property involved under execution, the redemption by Birkel, and transfer by him to the petitioner of the

property in question, and denied the other allegations of the complaint; the respondent denied the allegations of the answer with reference to usury, and as a further reply to the affirmative portions of the answer of the petitioner, and in the nature of deraignment of title, alleged that one Branser on the 6th of August, 1932, until the 2nd of July, 1934, was the owner of the premises, and that on August 6, 1932, he agreed, in writing, to sell the premises to the Glengarry Mining Company for the sum of \$33,500, and that in November, 1933, after paying certain moneys on account, Glengarry Mining Company was in default and Branser commenced an action against it in the State Court for cancellation of the contract and recovery of possession of the real property and for damages; that thereafter, an agreement in compromise and settlement was entered into between Branser and the Glengarry Mining Company, whereby it was stipulated that unless the Glengarry Company paid to Branser on or before the 1st of July, 1934, the sum of \$25,000, Branser was entitled to take judgment against the Glengarry Company in the action, and, if the payment was made, Branser would deliver a deed; that on the 28th day of June, 1934, this sum was unpaid; that the Glengarry Company did not have sufficient funds with which to make further payment, and it agreed, in writing, with the respondent, that if respondent paid the sum of \$25,000, it would deliver a deed of the premises to the respondent which is set out in writing as an exhibit, appearing at page 50 of the record (Exhibit A).

This agreement was not validly entered into by the corporation. It was simply signed by one Guenzel as president and one Keck as treasurer and no acknowledgment was attached thereto showing authority of the board of directors. There is no evidence of any authority of these officers to execute the agreement. This is in violation

of Sections 5933 and 6004 of the Revised Codes of Montana of 1935.

Respondent further alleged that the 1st of July being a Sunday, on the 2nd of July he paid the \$25,000, and on that day, the Glengarry Mining Company executed a deed to the respondent, and that Glengarry Mining Company never after the 28th of June raised the money or did the things that respondent claimed it should have done under the agreement, Exhibit A (R. 50) and that by reason thereof, the petitioner is estopped from asserting that the respondent is not the owner of the lands or that the Glengarry Company and its officers did not have the authority to make the transfer.

This deed was not validly executed. Said Sections 5933 and 6004 were not complied with.

The respondent in a letter of June 10, 1935, to Birkel admitted that the \$25,000 advanced to the Glengarry Mining Company was a loan. This letter in part reads:

"Confirming conversation with the Committee which you accompanies on Saturday, June 8th, to my office, wherein I was requested to give my promise in writing to extend the loan that I made to the Glengarry Mining Company in the event that they were not able to meet the payment due on the due date this year and I assured the Committee that I would extend the loan for another year.

* * *

May I also take this opportunity of advising you that there are no selfish motives involved in loaning this money to the Glengarry Mining Company to go ahead with their job. I know that Mr. Crone feels the same way. There does not have to be any fear on any side that there is any underhanded work going

on. Mr. Crone and myself are about in the same frame of mind and that is if we win, we all win and if we lose, we all lose" (R. 254-255).

The Question Presented.

Did the Circuit Court of Appeals in applying Sections 5933 and 6004 of the Revised Codes of Montana, 1935, fail to follow said statutes as construed by the Supreme Court of Montana in deciding that the agreement of June 28, 1934 (Ex. "A", R. 50) and the alleged deed dated July 2, 1934 (Plaintiff-Respondent's Ex. 7, R. 107) were valid instruments properly executed by the Glengarry Mining Company?

WHEREFORE, the petitioner prays that this court issue a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit directing it to send to this court for review a full transcript of the record in said Circuit Court of Appeals in the case entitled *Northern Mining Corporation* (a corporation), Appellant, v. *Max Trunz*, Appellee, and that the decree of said Circuit Court be reversed, and for such other relief in the premises as may be just.

NORTHERN MINING COMPANY,

By LEON R. JACOBS,
Counsel for Petitioner.

